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## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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**2003 Wisconsin Act 130**  
[2003 Assembly Bill 279]

**Legal Custody in an Action  
Affecting the Family; Effect of  
Abuse**

2003 Acts: [www.legis.state.wi.us/2003/data/acts/](http://www.legis.state.wi.us/2003/data/acts/)

Act Memos: [www.legis.state.wi.us/lc/act\\_memo/act\\_memo.htm](http://www.legis.state.wi.us/lc/act_memo/act_memo.htm)

### **LEGAL CUSTODY: REBUTTABLE PRESUMPTION**

The Act specifies that:

- If a court finds, in an action affecting the family (e.g., divorce), by a preponderance of the evidence that a parent has *engaged in a pattern of or serious incident of spousal abuse*, there is a *rebuttable presumption* that it is detrimental to the child and contrary to the child's best interest for that parent to have either sole or joint legal custody of the child. This presumption takes precedence over the other rules in current law regarding the determination of legal custody, such as the presumption that joint legal custody is in the child's best interest. The new presumption *may be rebutted* only by a preponderance of evidence that the abusive party has completed treatment for batterers provided through a certified treatment program or treatment provider and is not abusing alcohol or any other drug; and it is in the best interest of the child that the abusive party be given joint or sole legal custody based on the statutory factors that the court must consider in awarding custody and physical placement.
- If the court finds that a party has so engaged in spousal abuse, the court must state *in writing* in the custody order whether the presumption was rebutted and, if so, what evidence rebutted the presumption.
- If the court finds that *both parties* have engaged in a pattern or serious incident of spousal abuse, for purposes of the presumption the court must attempt to determine which party was the primary physical aggressor, considering all of the factors specified in the new law. If one, but not both, of the parties was convicted of a crime that was an act of domestic abuse, the court must find the party who was convicted to be the primary physical aggressor. If the

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

court determines that neither party was the primary physical aggressor, the new *presumption* against sole or joint legal custody *does not apply*.

### **PHYSICAL PLACEMENT**

The Act provides that, if the court grants physical placement to a parent who the court finds has engaged in a pattern or serious incident of spousal abuse, the court must provide for the safety and well-being of the child and for the safety of the other party. For that purpose, the court, giving consideration to the availability of services or programs and to the ability of the party who committed the battery or abuse (hereafter in this item, "the party") to pay, must impose one or more of the items specified in the new law, including, among others: (1) requiring the exchange of the child to occur in a protected setting or in the presence of an appropriate third party; (2) requiring the child's physical placement with the party to be supervised by an appropriate third party; and (3) requiring the party to complete treatment for batterers as a condition of exercising physical placement.

### **GUARDIAN AD LITEM; TRAINING; INVESTIGATION OF ABUSE**

The Act requires: (1) a GAL's continuing legal education (CLE) to include training on the dynamics of domestic violence and its effects on victims of domestic violence and on children (under current law, a GAL in an action affecting the family must have completed three hours of approved CLE relating to a GAL's functions); and (2) a GAL to investigate whether there is evidence of interspousal battery or domestic abuse, and to report to the court on the results of the investigation.

### **CUSTODY MEDIATION: WAIVER, SCREENING, TRAINING**

The Act requires: (1) the court to inform the parties: (a) that the court may waive the mediation requirement if the court determines that attending a session will cause undue hardship or endanger the health or safety of one of the parties; and (b) of the bases on which the court may make its determination, including evidence of interspousal battery or domestic abuse; (2) the first mediation session, which is a screening and evaluation session, to include screening for domestic abuse; and requires any intake form that the parties are required to complete before the start of mediation to ask each party whether either party has engaged in domestic abuse; and (3) every mediator to have training on the dynamics of domestic violence and its effects on victims of domestic violence and on children.

### **OTHER SIGNIFICANT PROVISIONS**

The Act: (1) requires the court to consider whether the mental and physical health of the persons living in a proposed custodial household *negatively affects* the child's intellectual, physical, or emotional well-being; and (2) provides that if the court finds that a parent has engaged in interspousal battery or domestic violence, the court, in awarding legal custody and physical placement, must consider the child's safety and well-being and the safety of the other parent as *the paramount concerns* when the court is awarding legal custody and physical placement.

The Act provides that it *first applies* to actions or proceedings that are commenced on the effective date of the Act, *including* actions or proceedings *to modify* a judgment or order granted before the effective date of the Act.

***Effective Date:*** March 13, 2004

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DLS:ksm

March 4, 2004